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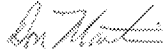
west virginia department of environmental protection

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Division of Land Restoration  
P.O. Box 38, St. Rt. 20 South  
French Creek, WV 26218  
(304) 926-0499, ext. 1275, fax (304) 924-6781

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

**MEMORANDUM**

**To:** Luis Pizarro  
**From:** Don Martin   
**Date:** February 27, 2013  
**Subject:** MPM Silicones facility, WVD004325353, Response to Information Request

We've conducted a somewhat cursory review of the August 1, 2012 information submitted to EPA by Momentive (MPM Silicones, LLC), and offer the following comments for review and further discussions.

For reference, attached are selected, highlighted excerpts from 40 CFR 761, which Chemtura cites in its communications to MPM regarding the status of the "subsurface PCBs" at the facility. Chemtura maintains that the contamination does not require remediation because the PCBs were disposed prior to 1978 and therefore are "... *presumed not to present an unreasonable risk of injury to health or the environment from exposure...*", as provided in 40 CFR 761.50(b)(3).

That specific section may also be what Union Carbide reportedly evaluated and concluded that no disclosure (or clean-up) was necessary, as alluded to during our May 12, 2012 meeting at the plant.

*Presume - to suppose to be true without proof.* Merriam-Webster Dictionary

While the presumption allowed in the referenced section may be applicable so long as the contaminated area is undisturbed, the facts in this case discredit that presumption. The available data indicate that ground water, sediments, and soils are contaminated at concentrations that exceed regulatory limits. The risk from exposure has apparently already occurred during past construction activities in the waste water treatment or "EP" areas. Current and future risks exist due to the lack of delineation of the contamination, the potential for other earth disturbance activities in the area, and the contaminated sediments in Sugar Camp Run.

As provided in 40 CFR 761.50(b)(3)(i)(A), we wish to solicit EPA to require the owner/operator to generate data to characterize the risk associated with the PCB contamination at the facility.

For reference to this memo, I will forward a compilation of pertinent documents associated with MPM's response in a separate email.

Please feel free to contact us if you have any questions or wish to further discuss the circumstances.

cc: Charlie Armstead  
Bill Wentworth

email: [Donald.W.Martin@wv.gov](mailto:Donald.W.Martin@wv.gov)

Promoting a healthy environment.

#### 40 CFR 761.3

**PCB remediation waste** means waste containing PCBs as a result of a spill, release, or other unauthorized disposal, at the following concentrations: Materials disposed of prior to April 18, 1978, that are currently at concentrations  $\geq 50$  ppm PCBs, regardless of the concentration of the original spill; materials which are currently at any volume or concentration where the original source was  $\geq 500$  ppm PCBs beginning on April 18, 1978, or  $\geq 50$  ppm PCBs beginning on July 2, 1979; and materials which are currently at any concentration if the PCBs are spilled or released from a source not authorized for use under this part. PCB remediation waste means soil, rags, and other debris generated as a result of any PCB spill cleanup, including, but not limited to:

- (1) Environmental media containing PCBs, such as soil and gravel; dredged materials, such as sediments, settled sediment fines, and aqueous decantate from sediment.
- (2) Sewage sludge containing  $< 50$  ppm PCBs and not in use according to § 761.20(a)(4); PCB sewage sludge; commercial or industrial sludge contaminated as the result of a spill of PCBs including sludges located in or removed from any pollution control device; aqueous decantate from an industrial sludge.
- (3) Buildings and other man-made structures (such as concrete floors, wood floors, or walls contaminated from a leaking PCB or PCB-Contaminated Transformer), porous surfaces, and non-porous surfaces.

#### 40 CFR 761.50(b)(3)

##### § 761.50 Applicability

(b) *PCB waste*—(1) *PCB liquids*. Any person removing PCB liquids from use (i.e., not PCB remediation waste) must dispose of them in accordance with § 761.60(a), or decontaminate them in accordance with § 761.79.

(3) PCB remediation waste. PCB remediation waste, including PCB sewage sludge, is regulated for cleanup and disposal in accordance with § 761.61.

(i) Any person responsible for PCB waste at as-found concentrations  $\geq 50$  ppm that was either placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978, regardless of the concentration of the spill or release; or placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was  $\geq 50$  ppm but  $< 500$  ppm, must dispose of the waste as follows:

(A) Sites containing these wastes are presumed not to present an unreasonable risk of injury to health or the environment from exposure to PCBs at the site. However, the EPA Regional Administrator may inform the owner or operator of the site that there is reason to believe that spills, leaks, or other uncontrolled releases or discharges, such as leaching, from the site constitute ongoing disposal that may present an unreasonable risk of injury to health or the environment from exposure to PCBs at the site, and require the owner or operator to generate data necessary to characterize the risk. If after reviewing any such data, the EPA Regional Administrator makes a finding, that an unreasonable risk exists, then he or she may direct the owner or operator of the site to dispose of the PCB remediation waste in accordance with § 761.61 such that an unreasonable risk of injury no longer exists.

(B) Unless directed by the EPA Regional Administrator to dispose of PCB waste in accordance with paragraph (b)(3)(i)(A) of this section, any person responsible for PCB waste at as-found concentrations  $\geq 50$  ppm that was either placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978, regardless of the concentration of the spill or release; or placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was  $\geq 50$  ppm but  $< 500$  ppm, who unilaterally decides to dispose of that waste (for example, to obtain insurance or to sell the property), is not required to clean up in accordance with § 761.61. Disposal of the PCB remediation waste must comply with § 761.61. However, cleanup of those wastes that is not in complete compliance with § 761.61 will not afford the responsible party with relief from the applicable PCB regulations for that waste.

(ii) Any person responsible for PCB waste at as-found concentrations  $\geq 50$  ppm that was either placed in a land disposal facility, spilled, or otherwise released into the environment on or after April 18, 1978, but prior to July 2, 1979, where the concentration of the spill or release was  $\geq 500$  ppm; or placed in a land disposal facility, spilled, or otherwise released into the environment on or after July 2, 1979, where the concentration of the spill or release was  $\geq 50$  ppm, must dispose of it in accordance with either of the following:

## Subpart G—PCB Spill Cleanup

### Policy

#### § 761.120 Scope.

(a) *General.* This policy establishes criteria EPA will use to determine the adequacy of the cleanup of spills resulting from the release of materials containing PCBs at concentrations of 50 ppm or greater. The policy applies to spills which occur after May 4, 1987.

(1) Existing spills (spills which occurred prior to May 4, 1987, are excluded from the scope of this policy for two reasons:

(i) For old spills which have already been discovered, this policy is not intended to require additional cleanup where a party has already cleaned a spill in accordance with requirements imposed by EPA through its regional offices, nor is this policy intended to interfere with ongoing litigation of enforcement actions which bring into issue PCB spills cleanup.

(ii) EPA recognizes that old spills which are discovered after the effective date of this policy will require site-by-site evaluation because of the likelihood that the site involves more pervasive PCB contamination than fresh spills and because old spills are generally more difficult to clean up than fresh spills (particularly on porous surfaces such as concrete). Therefore, spills which occurred before the effective date of this policy are to be decontaminated to requirements established at the discretion of EPA, usually through its regional offices.